

8980674 M.A. v. Mervyns California Issued: 11/15/01

Mervyn's California ("Mervyn's" hereafter) asks the Appeals Board of the Utah Labor Commission to vacate the Administrative Law Judge's prior decision and order a new evidentiary hearing regarding M. E. A.'s complaint against Mervyn's under the Utah Antidiscrimination Act (Title 34A, Chapter 5, Utah Code Annotated).

The Appeals Board exercises jurisdiction in this matter pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-5-107(11).

ISSUE PRESENTED

Should a new hearing be held on Ms. A.'s employment discrimination complaint against Mervyn's?

BACKGROUND AND DISCUSSION

On July 3, 2001, Judge LaJeunesse conducted an evidentiary hearing on Ms. A.'s complaint of employment discrimination against Mervyn's. Ms. A. appeared and testified at the hearing; Mervyn's failed to participate. Relying on Ms. A.'s testimony, Judge LaJeunesse found that Mervyn's had unlawfully discriminated against Ms. A. in the terms and conditions of her employment in violation of the Utah Antidiscrimination Act. The ALJ ordered Mervyn's to cease all discriminatory employment practices, pay back wages to Ms. A. and reinstate her in a suitable employment position.

In what is styled a "motion for review," Mervyn's alleges that it did not receive notice of the hearing conducted by Judge LaJeunesse and for that reason had good cause for its failure to appear. On that basis, Mervyn's asks that a new evidentiary hearing be scheduled in this matter.

Although Mervyn's request is styled as an appeal of the ALJ's decision, the substance of Mervyn's argument is not that the ALJ erred in his decision, but that a new hearing should be scheduled with appropriate notice to both parties, thereby enabling Mervyn's to participate. This request for a new hearing should, in the first instance, be considered by the ALJ rather than the Appeals Board.

In light of the foregoing, the Appeals Board remands this matter to the ALJ to determine whether a new hearing is warranted. In the event that the ALJ denies Mervyn's request, Mervyn's may then seek review by the Appeals Board or Labor Commissioner.

ORDER

The Appeals Board remands this matter to the ALJ for further proceedings consistent with this decision. It is so ordered.

Dated this 15th day of November, 2001.

Colleen S. Colton, Chair

L. Zane Gill

Patricia S. Drawe